

HOUSE BILL NO. 205

INTRODUCED BY K. KERNS

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A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING A STATE LIMITATION ON THE USE OF SOUND REDUCTION DEVICES ON FIREARMS; AMENDING SECTIONS 87-1-201, 87-1-301, AND 87-6-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 87-1-201, MCA, is amended to read:

**"87-1-201. Powers and duties.** (1) Except as provided in subsection (11), the department shall supervise all the wildlife, fish, game, game and nongame birds, waterfowl, and the game and fur-bearing animals of the state and may implement voluntary programs that encourage hunting access on private lands and that promote harmonious relations between landowners and the hunting public. The department possesses all powers necessary to fulfill the duties prescribed by law and to bring actions in the proper courts of this state for the enforcement of the fish and game laws and the rules adopted by the department.

(2) Except as provided in subsection (11), the department shall enforce all the laws of the state regarding the protection, preservation, management, and propagation of fish, game, fur-bearing animals, and game and nongame birds within the state.

(3) The department has the exclusive power to spend for the protection, preservation, management, and propagation of fish, game, fur-bearing animals, and game and nongame birds all state funds collected or acquired for that purpose, whether arising from state appropriation, licenses, fines, gifts, or otherwise. Money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from fines or damages collected for violations of the fish and game laws, or from appropriations or received by the department from any other sources is under the control of the department and is available for appropriation to the department.

(4) The department may discharge any appointee or employee of the department for cause at any time.

(5) The department may dispose of all property owned by the state used for the protection, preservation, management, and propagation of fish, game, fur-bearing animals, and game and nongame birds that is of no further value or use to the state and shall turn over the proceeds from the sale to the state treasurer to be credited

1 to the fish and game account in the state special revenue fund.

2 (6) The department may not issue permits to carry firearms within this state to anyone except regularly  
3 appointed officers or wardens.

4 (7) Except as provided in subsection (11), the department is authorized to make, promulgate, and  
5 enforce reasonable rules and regulations not inconsistent with the provisions of Title 87, chapter 2, that in its  
6 judgment will accomplish the purpose of chapter 2.

7 (8) The department is authorized to promulgate rules relative to tagging, possession, or transportation  
8 of bear within or outside of the state.

9 (9) (a) The department shall implement programs that:

10 (i) manage wildlife, fish, game, and nongame animals in a manner that prevents the need for listing under  
11 87-5-107 or under the federal Endangered Species Act, 16 U.S.C. 1531, et seq.;

12 (ii) manage listed species, sensitive species, or a species that is a potential candidate for listing under  
13 87-5-107 or under the federal Endangered Species Act, 16 U.S.C. 1531, et seq., in a manner that assists in the  
14 maintenance or recovery of those species;

15 (iii) manage elk, deer, and antelope populations based on habitat estimates determined as provided in  
16 87-1-322 and maintain elk, deer, and antelope population numbers at or below population estimates as provided  
17 in 87-1-323. In implementing an elk management plan, the department shall, as necessary to achieve harvest  
18 and population objectives, request that land management agencies open public lands and public roads to public  
19 access during the big game hunting season.

20 (iv) in accordance with the forest management plan required by 87-1-622, address fire mitigation, pine  
21 beetle infestation, and wildlife habitat enhancement giving priority to forested lands in excess of 50 contiguous  
22 acres in any state park, fishing access site, or wildlife management area under the department's jurisdiction.

23 (b) In maintaining or recovering a listed species, a sensitive species, or a species that is a potential  
24 candidate for listing, the department shall seek, to the fullest extent possible, to balance maintenance or recovery  
25 of those species with the social and economic impacts of species maintenance or recovery.

26 (c) Any management plan developed by the department pursuant to this subsection (9) is subject to the  
27 requirements of Title 75, chapter 1, part 1.

28 (d) This subsection (9) does not affect the ownership or possession, as authorized under law, of a  
29 privately held listed species, a sensitive species, or a species that is a potential candidate for listing.

30 (10) The department shall publish an annual game count, estimating to the department's best ability the

1 numbers of each species of game animal, as defined in 87-2-101, in the hunting districts and administrative  
2 regions of the state. In preparing the publication, the department may incorporate field observations, hunter  
3 reporting statistics, or any other suitable method of determining game numbers. The publication must include an  
4 explanation of the basis used in determining the game count.

5 (11) The department may not regulate the use or possession of firearms, firearm accessories, or  
6 ammunition, including the chemical elements of ammunition used for hunting. This does not prevent:

7 (a) the restriction of certain hunting seasons to the use of specified hunting arms, such as the  
8 establishment of special archery seasons;

9 (b) for human safety, the restriction of certain areas to the use of only specified hunting arms, including  
10 bows and arrows, traditional handguns, and muzzleloading rifles;

11 (c) the restriction of the use of shotguns for the hunting of deer and elk pursuant to ~~87-6-401(1)(f)~~  
12 87-6-401(1)(e);

13 (d) the regulation of migratory game bird hunting pursuant to 87-3-403; or

14 (e) the restriction of the use of rifles for bird hunting pursuant to ~~87-6-401(1)(g) or (1)(h)~~ 87-6-401(1)(f)  
15 or (1)(g)."

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17 **Section 2.** Section 87-1-301, MCA, is amended to read:

18 **"87-1-301. Powers of commission.** (1) Except as provided in subsection (7), the commission:

19 (a) shall set the policies for the protection, preservation, management, and propagation of the wildlife,  
20 fish, game, furbearers, waterfowl, nongame species, and endangered species of the state and for the fulfillment  
21 of all other responsibilities of the department as provided by law;

22 (b) shall establish the hunting, fishing, and trapping rules of the department;

23 (c) except as provided in 87-1-303(3), shall establish the rules of the department governing the use of  
24 lands owned or controlled by the department and waters under the jurisdiction of the department;

25 (d) must have the power within the department to establish wildlife refuges and bird and game preserves;

26 (e) shall approve all acquisitions or transfers by the department of interests in land or water, except as  
27 provided in 87-1-209(4);

28 (f) shall review and approve the budget of the department prior to its transmittal to the budget office;

29 (g) shall review and approve construction projects that have an estimated cost of more than \$1,000 but  
30 less than \$5,000; and

1 (h) shall manage elk, deer, and antelope populations based on habitat estimates determined as provided  
2 in 87-1-322 and maintain elk, deer, and antelope population numbers at or below population estimates as  
3 provided in 87-1-323. In developing or implementing an elk management plan, the commission shall consider  
4 landowner tolerance when deciding whether to restrict elk hunting on surrounding public land in a particular  
5 hunting district. As used in this subsection (1)(h), "landowner tolerance" means the written or documented verbal  
6 opinion of an affected landowner regarding the impact upon the landowner's property within the particular hunting  
7 district where a restriction on elk hunting on public property is proposed.

8 (2) The commission may adopt rules regarding the use and type of archery equipment that may be  
9 employed for hunting and fishing purposes, taking into account applicable standards as technical innovations in  
10 archery equipment change.

11 (3) The commission may adopt rules regarding the establishment of special licenses or permits, seasons,  
12 conditions, programs, or other provisions that the commission considers appropriate to promote or enhance  
13 hunting by Montana's youth and persons with disabilities.

14 (4) (a) The commission may adopt rules regarding nonresident big game combination licenses to:

15 (i) separate deer licenses from nonresident elk combination licenses;

16 (ii) set the fees for the separated deer combination licenses and the elk combination licenses without the  
17 deer tag;

18 (iii) condition the use of the deer licenses; and

19 (iv) limit the number of licenses sold.

20 (b) The commission may exercise the rulemaking authority in subsection (4)(a) when it is necessary and  
21 appropriate to regulate the harvest by nonresident big game combination license holders:

22 (i) for the biologically sound management of big game populations of elk, deer, and antelope;

23 (ii) to control the impacts of those elk, deer, and antelope populations on uses of private property; and

24 (iii) to ensure that elk, deer, and antelope populations are at a sustainable level as provided in 87-1-321  
25 through 87-1-325.

26 (5) (a) Subject to the provisions of 87-2-115, the commission may adopt rules establishing license  
27 preference systems to distribute hunting licenses and permits:

28 (i) giving an applicant who has been unsuccessful for a longer period of time priority over an applicant  
29 who has been unsuccessful for a shorter period of time; and

30 (ii) giving a qualifying landowner a preference in drawings. As used in this subsection (5)(a), "qualifying

1 landowner" means the owner of land that provides some significant habitat benefit for wildlife, as determined by  
2 the commission.

3 (b) The commission shall square the number of points purchased by an applicant per species when  
4 conducting drawings for licenses and permits.

5 (6) (a) The commission may adopt rules to:

6 (i) limit the number of nonresident mountain lion hunters in designated hunting districts; and

7 (ii) determine the conditions under which nonresidents may hunt mountain lion in designated hunting  
8 districts.

9 (b) The commission shall consider, but is not limited to consideration of, the following factors:

10 (i) harvest of lions by resident and nonresident hunters;

11 (ii) history of quota overruns;

12 (iii) composition, including age and sex, of the lion harvest;

13 (iv) historical outfitter use;

14 (v) conflicts among hunter groups;

15 (vi) availability of public and private lands; and

16 (vii) whether restrictions on nonresident hunters are more appropriate than restrictions on all hunters.

17 (7) The commission may not regulate the use or possession of firearms, firearm accessories, or  
18 ammunition, including the chemical elements of ammunition used for hunting. This does not prevent:

19 (a) the restriction of certain hunting seasons to the use of specified hunting arms, such as the  
20 establishment of special archery seasons;

21 (b) for human safety, the restriction of certain areas to the use of only specified hunting arms, including  
22 bows and arrows, traditional handguns, and muzzleloading rifles;

23 (c) the restriction of the use of shotguns for the hunting of deer and elk pursuant to ~~87-6-401(1)(f)~~  
24 87-6-401(1)(e);

25 (d) the regulation of migratory game bird hunting pursuant to 87-3-403; or

26 (e) the restriction of the use of rifles for bird hunting pursuant to ~~87-6-401(1)(g) or (1)(h)~~ 87-6-401(1)(f)  
27 or (1)(g)."

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29 **Section 3.** Section 87-6-401, MCA, is amended to read:

30 **"87-6-401. Unlawful use of equipment while hunting.** (1) A person may not:

1 (a) hunt or attempt to hunt any game animal or game bird by the aid or with the use of any snare, except  
2 as allowed in 87-3-127 and 87-3-128, set gun, projected artificial light, trap, salt lick, or bait;

3 (b) use any recorded or electrically amplified bird or animal calls or sounds or recorded or electrically  
4 amplified imitations of bird or animal calls or sounds to assist in the hunting, taking, killing, or capturing of wildlife  
5 except predatory animals and those birds not protected by state or federal law;

6 ~~(c) while hunting, take into a field or forest or have in the person's possession any device or mechanism  
7 devised to silence, muffle, or minimize the report of any firearm, whether the device or mechanism is operated  
8 from or attached to any firearm;~~

9 ~~(d)~~(c) while hunting, possess any electronic motion-tracking device or mechanism, as defined by  
10 commission rule, that is designed to track the motion of a game animal and relay information on the animal's  
11 movement to the hunter. A radio-tracking collar attached to a dog that is used by a hunter engaged in lawful  
12 hunting activities is not considered a motion-tracking device or mechanism for purposes of this subsection ~~(1)(d)~~  
13 (1)(c).

14 ~~(e)~~(d) while hunting, use archery equipment that has been prohibited by rule of the commission;

15 ~~(f)~~(e) use a shotgun to hunt deer or elk except with weapon type and loads as specified by the  
16 department;

17 ~~(g)~~(f) use a rifle to hunt or shoot upland game birds unless the use of rifles is permitted by the  
18 department. This does not prohibit the shooting of wild waterfowl from blinds over decoys with a shotgun only,  
19 not larger than a number 10 gauge, fired from the shoulder.

20 ~~(h)~~(g) use a rifle to hunt or shoot wild turkey during the spring wild turkey season.

21 (2) A person convicted of a violation of this section shall be fined not less than \$50 or more than \$1,000  
22 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon  
23 conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping  
24 license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in  
25 77-1-101, for recreational purposes for a period of time set by the court.

26 (3) A person convicted of hunting while using projected artificial light as described in subsection (1)(a)  
27 may be subject to the additional penalties provided in 87-6-901 and 87-6-902.

28 (4) A violation of this section may also result in an order to pay restitution pursuant to 87-6-905 through  
29 87-6-907."  
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